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Draft Financial Regulations of the International Criminal Court prepared by the Secretariat

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I. Introductory note

1. Article 113 of the Rome Statute of the International Criminal Court (PCNICC/1999/INF/3) provides that the Financial Regulations and Rules of the International Criminal Court (hereinafter sometimes referred to as the "Court") shall be adopted by the Assembly of States Parties. The Preparatory Commission for the International Criminal Court has requested the Secretariat to prepare for its consideration a text of draft Financial Regulations of the Court. Part II of the present document contains a text of draft Financial Regulations prepared by the secretariat in response to that request.

2. In preparing the text of draft Financial Regulations, the Secretariat has used as a model the Financial Regulations of the International Tribunal for the Law of the Sea, approved by the Tribunal for the Law of the Sea (hereinafter sometimes referred to as the "Tribunal") on 8 October 1998 (SPLOS/36). These Financial Regulations are ultimately to be adopted by the Meeting of States Parties to the United Nations Convention on the Law of the Sea (see SPLOS/48, para. 37). Pending the adoption of its own Financial Regulations, the International Tribunal for the Law of the Sea applies the United Nations Financial Regulations *mutatis mutandis* (see SPLOS/8, para. 9).

3. The Secretariat suggests that the Financial Regulations of the Tribunal would be a suitable model for the Financial Regulations of the Court. First, the Financial Regulations of the Tribunal will have been found suitable for an international judicial tribunal. Secondly, these Financial Regulations will be based on and follow closely the United Nations Financial Regulations (see SPLOS/31, para. 33), and compatibility between the Financial Regulations of the International Criminal Court and the Financial Regulations of the United Nations is both appropriate and desirable.

4. It may be noted that other international judicial tribunals apply the United Nations Financial Regulations per se. These include the International Court of Justice (see United Nations Financial Regulation 1.1), as well as the International Criminal Tribunals for the Former Yugoslavia and Rwanda.

5. The Financial Regulations approved by the Tribunal on 8 October 1998 were before the Meeting of States Parties at its meeting from 22 to 26 May 2000, together with proposals for amending those Financial Regulations. References to such proposals are given in the footnotes to the present draft text. Although some of these proposals were adopted at the recently concluded Meeting of States Parties, the Meeting has not yet adopted the text of the Tribunal's Financial Regulations as a whole. The Secretariat of the Meeting of States Parties is preparing an updated text of the Tribunal's Financial Regulations, incorporating the results of the Meeting of States Parties.

6. The numbering of the articles in the draft text set forth in part II hereof follows the numbering of the corresponding articles of the Financial Regulations approved by the International Tribunal for the Law of the Sea (SPLOS/36). In addition, the text of draft Financial Regulations is annotated with marginal notes providing references to the corresponding regulations of the Financial Regulations of the United Nations, and footnotes explaining material differences between the present draft text and the Financial Regulations of the United Nations and of the International Tribunal for the Law of the Sea. Minor differences are not indicated.

7. While, as noted above, it would be appropriate and desirable for the Financial Regulations of the International Criminal Court to be compatible with those of the United Nations, the Financial Regulations of the Court must also accommodate and, where necessary, be adapted to, the particular characteristics of the Court, such as the size of its budget and the size and configuration of its secretariat, its programme and its administration. Footnotes to the attached draft text point out some provisions for which adaptations might be considered.

8. As noted above, article 113 of the Rome Statute provides that the Assembly of States Parties is also to adopt the Financial Rules of the Court. In United Nations practice, financial regulations are the broad legislative directives established by the relevant legislative body (e.g., in the case of the United Nations, the General Assembly; in the case of the United Nations Development Programme (UNDP), the Executive Board (formerly designated as the Governing Council); in the case of the United Nations Children's fund (UNICEF), the Executive Board) to govern the financial administration of the body in question. Detailed financial rules are promulgated, usually by the chief administrative officer of the body in question (e.g., in the case of the United Nations, the Secretary-General; in the case of UNDP, the Administrator; in the case of UNICEF, the Executive Director), in accordance with the financial regulations. Although, in the case of the International Criminal Court, pursuant to article 113 of the Rome Statute, the Assembly of States Parties is to adopt both the Financial Regulations and the Financial Rules, the secretariat assumes that the respective scopes of the Financial Regulations and the Financial Rules of the Court are to correspond with the practice just described.

9. The secretariat has not, at the present stage, provided a draft of the Financial Rules of the Court. Since the Financial Rules are to be in accordance with, and flow from, the Financial Regulations, it would seem efficient and desirable for the Financial Regulations to be adopted before the Financial Rules are prepared. This is the approach that has been followed by the International Tribunal for the Law of the Sea. That Tribunal is applying the United Nations Financial Rules pending the adoption of its own Financial Rules. The secretariat would be happy to assist the Preparatory Commission in preparing a text of draft Financial Rules at the appropriate time.

II. Text of the draft Financial Regulations of the International Criminal Court, with annotations

The Assembly of States Parties,

Noting that the Rome Statute of the International Criminal Court, article 113, provides that, except as otherwise specifically provided, all financial matters related to the Court and the meetings of the Assembly of States Parties, including its Bureau and subsidiary bodies, shall be governed by the Rome Statute and the Financial Regulations and Rules adopted by the Assembly of States Parties,

Adopts the following Financial Regulations for the International Criminal Court.

Regulation 1
Applicability

1.1 These regulations shall govern the financial administration of the International Criminal Court. (UN fin. reg. 1.1)

1.2 For the purposes of these Regulations:[1]

(a) "Assembly of States Parties" means the Assembly of States Parties to the Rome Statute of the International Criminal Court, adopted at Rome on 17 July 1998;

(b) "Committee on Budget and Finance" means the Committee established as such by the International Criminal Court;[2]

(c) "Court" means the International Criminal Court;

(d) "Presidency" means the Presidency of the International Criminal Court;

(e) "Registrar" means the Registrar of the International Criminal Court;

(f) "Rome Statute" means the Rome Statute of the International Criminal Court, adopted at Rome on 17 July 1998;

(g) "Rules" means the Rules of the Court.

1.3 The Assembly of States Parties shall establish detailed financial rules and procedures in order to ensure effective financial administration and the exercise of economy.[3] (UN fin. reg. 10.1 (a))

Regulation 2
The financial period

2.1 The financial period shall consist of two consecutive calendar years, beginning with the year 200_. Until then, the financial period shall consist of one calendar year. (UN fin. reg. 2.1)

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[1] The United Nations Financial Regulations do not contain a "definitions" provision. Definitions are provided in the United Nations Financial Rules. The corresponding provision of the Financial Regulations approved by the International Tribunal for the Law of the Sea is the subject of a proposal for amendment (see SPLOS/CRP.19).

[2] It is assumed that there will be a Committee on Budget and Finance, or some comparable committee.

[3] The corresponding provision in the United Nations Financial Regulations is included in regulation 10.1 (see para. (a) thereof), which sets forth functions of the Secretary-General, since the United Nations Financial Rules are promulgated by the Secretary-General. Pursuant to article 113 of the Rome Statute, the Financial Rules of the Court are to be adopted by the Assembly of States Parties. Thus, this provision is included in financial regulation 1 of the Court.

Regulation 3
The budget

3.1 The draft budget for each financial period shall be prepared by the Registrar. (UN fin. reg. 3.1)

3.2 The draft budget shall cover income and expenditures for the financial period to which they relate and shall be presented in United States dollars. (UN fin. reg. 3.2)

3.3 The draft budget shall be divided into parts, sections and, as appropriate, programme support.[4] It shall be accompanied by such information, annexes and explanatory statements as may be requested by or on behalf of the Assembly of States Parties, including a statement on the main changes in comparison with the budget of the previous financial period and such further annexes or statements as the Registrar may deem necessary and useful. (UN fin. reg. 3.3)

3.4 The Registrar shall submit the draft budget for the following financial period to the Committee on Budget and Finance before the end of February of the year preceding the financial period for examination. The Committee on Budget and Finance shall transmit the draft budget proposed by the Registrar to the [Presidency],[5] with its comments and recommendations.[6] (UN fin. regs. 3.4 to 3.6)

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[4] The United Nations Financial Regulations, article 3.3, include here the following sentence: "Programme narratives shall set out subprogrammes, programme elements, output and users". This sentence is not included in the corresponding financial regulation of the International Tribunal for the Law of the Sea (regulation 3.3) and, therefore, has not been included in the present draft text.

[5] In the United Nations Financial Regulations, the Secretary-General submits his proposed programme budget to the Advisory Committee on Administrative and Budgetary Questions (ACABQ). ACABQ examines and reports on the proposed budget to the General Assembly, which ultimately adopts the budget (see United Nations financial regulations 3.5 to 3.7). Under the Financial Regulations approved by the International Tribunal for the Law of the Sea, the Registrar submits the draft budget to the Committee on Budget and Finance, which transmits the draft budget to the "Tribunal", with its comments and recommendations. The "Tribunal" considers and approves the draft budget, which is then submitted to the Meeting of States Parties for adoption (see financial regulations 3.4 and 3.5 approved by the International Tribunal for the Law of the Sea). The present text of draft regulations 3.4 and 3.5 for the International Criminal Court follows the pattern of financial regulations 3.4 and 3.5 approved by the International Tribunal for the Law of the Sea. However, in the case of the International Criminal Court, the question arises as to where to allocate the functions that, in financial regulations 3.4 and 3.5 approved by the International Tribunal for the Law of the Sea, are allocated to the "Tribunal". In this connection, it may be noted that the International Tribunal for the Law of the Sea is composed of "a body of 21 independent members" (United Nations Convention on the Law of the Sea, annex VI, article 2(1)), and it is this "Tribunal" which performs the functions allocated to it in financial regulations 3.4 and 3.5. However, the International Criminal Court is composed of four organs: (a) the Presidency, (b) an Appeals Division, a Trial Division and a Pre-Trial Division, (c) the Office of the Prosecutor and (d) the Registry (Rome Statute, article 34). Thus, in the case of the International Criminal Court, it may be indefinite to allocate to the

3.5 The [Presidency] shall consider and approve the draft budget for the following financial period. The proposed budget as approved by the [Presidency] shall be submitted to the Assembly of States Parties for consideration and adoption.[7] (UN fin. regs. 3.6 and 3.7)

3.6 Supplementary budget proposals shall be submitted by the Registrar whenever necessary, and to the extent possible, with respect to the current financial period. They shall be prepared and, as far as possible, submitted in accordance with the procedure set out in this regulation.[8] (UN fin. regs. 3.8 and 3.9)

3.7 The Registrar may enter into commitments for future financial periods, provided that such commitments: (UN fin. reg. 3.10)

(a) Are for activities which have been approved by the Assembly of States Parties and are expected to continue beyond the end of the current financial period; or

(b) Are authorized by specific decisions of the [Presidency][9] acting with the prior approval of the Assembly of States Parties.

"Court" the functions which, in the case of the International Tribunal for the Law of the Sea, are allocated to the "Tribunal". It will have to be determined which organ of the Court should exercise these functions. One possibility is that the functions be exercised by the Presidency. Thus, for the purposes of the present text, the word "Presidency" has been placed within square brackets, pending a decision on the question.

[6] The corresponding provision of the Financial Regulations approved by the International Tribunal for the Law of the Sea is the subject of a proposal for amendment (see SPLOS/CRP.18).

[7] See footnote 5, above. The corresponding provision of the Financial Regulations approved by the International Tribunal for the Law of the Sea is the subject of a proposal for amendment (see SPLOS/CRP.19).

[8] The corresponding provision of the Financial Regulations approved by the International Tribunal for the Law of the Sea is the subject of a proposal for amendment (see SPLOS/CRP.19).

[9] The corresponding provision of the United Nations Financial Regulations, regulation 3.10 (b), authorizes the Secretary-General to enter into commitments for future financial periods provided that such commitments are authorized by specific decisions of the General Assembly. Financial regulation 3.7 (b) approved by the International Tribunal for the Law of the Sea authorizes the Registrar to enter into such commitments provided that they are authorized by specific decisions of the "Tribunal" acting with the prior approval of the Meeting of States Parties. For reasons discussed in footnote 5, above, in the case of the International Criminal Court, it may be indefinite for such authority to be given simply by the "Court", acting with the prior approval of the Assembly of States Parties. Thus, for the purposes of the present text, the word "Presidency" has been placed with square brackets, pending a decision on to whom the reporting should be made.

Regulation 4
Appropriations

4.1 The appropriations adopted by the Assembly of States Parties shall constitute an authorization for the Registrar to incur obligations and make payments for the purposes for which the appropriations were adopted and up to the amounts adopted. (UN fin. reg. 4.1)

4.2 Appropriations shall be available for obligation during the financial period to which they relate. (UN fin. reg. 4.2)

4.3 Appropriations shall remain available for twelve months following the end of the financial period to which they relate to the extent that they are required to discharge obligations in respect of goods supplied and services rendered in the financial period and to liquidate any other outstanding legal obligation of the financial period. Any unused balance of the appropriations shall be surrendered.[10] (UN fin. reg. 4.3)

4.4 At the end of the twelve-month period provided in regulation 4.3, the then remaining balance of any appropriations retained will be surrendered. At that time, any unliquidated obligations of the financial period in question shall be cancelled or, where the obligation remains a valid charge, transferred as an obligation against current appropriations [11] (UN fin. reg. 4.4)

4.5 No transfer between appropriation sections may be made without authorization by the Assembly of States Parties. However, the [Presidency] may, in exceptional circumstances, authorize such a transfer and shall report thereon to the Assembly of States Parties.[12] (UN fin. reg. 4.5)

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[10] The corresponding provision of the Financial Regulations approved by the International Tribunal for the Law of the Sea is the subject of a proposal for amendment (see SPLOS/CRP.19).

[11] The corresponding provision of the Financial Regulations approved by the International Tribunal for the Law of the Sea is the subject of a proposal for amendment (see SPLOS/CRP.19).

[12] A sentence analogous to the last sentence of regulation 4.5 does not appear in the corresponding provision of the United Nations Financial Regulations (regulation 4.5). It does appear in financial regulation 4.5 approved by the International Tribunal for the Law of the Sea. However, in that provision, the authority to authorize, in exceptional cases, a transfer between appropriation sections is allocated to the "Tribunal". For reasons discussed in footnote 5, above, in the case of the International Criminal Court, it may be indefinite for this authority to be allocated simply to the "Court". Thus, for the purposes of the present text, the word "Presidency" has been placed within square brackets, pending a decision on to whom the authority should be allocated. The corresponding provision of the Financial Regulations approved by the International Tribunal for the Law of the Sea is the subject of a proposal for amendment (see SPLOS/CRP.19). In addition, a proposal has been made to add a new regulation 4.6 to the Financial Regulation approved by the International Tribunal for the Law of the Sea (see SPLOS/CRP.19).

Regulation 5
Provision of funds

5.1 The funds of the Court shall include:[13]

(a) Assessed contributions made by States Parties in accordance with article 115, paragraph (a), of the Rome Statute;

(b) Funds provided by the United Nations in accordance with article 115, paragraph (b), of the Rome Statute;

(c) Voluntary contributions by Governments, international organizations, individuals, corporations and other entities, in accordance with article 116 of the Rome Statute;

(d) Such other funds to which the Court may become entitled or may receive.

5.2 The appropriations, subject to the adjustments effected in accordance with the provisions of regulation 5.3, shall be financed by contributions from States Parties in accordance with an agreed scale of assessment, as provided in article 117 of the Rome Statute. Pending the receipt of such contributions, the appropriations may be financed from the Working Capital Fund.[14] (UN fin. reg. 5.1)

5.3 The contributions of States Parties shall be assessed for a financial period on the basis of the appropriations approved by the Assembly of States Parties for that financial period, except that adjustments shall be made to the assessments in respect of: (UN fin. reg. 5.2 (a), (c) and (d), respectively)

(a) Supplementary appropriations, for which contributions have not previously been assessed on States Parties;[15]

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[13] A provision of this nature does not appear in the United Nations Financial Regulations. It does appear in the Financial Regulations approved by the International Tribunal for the Law of the Sea. The corresponding provision of the Financial Regulations approved by the International Tribunal for the Law of the Sea is the subject of a proposal for amendment (see SPLOS/CRP.16).

[14] The corresponding provision of the Financial Regulations approved by the International Tribunal for the Law of the Sea is the subject of proposals for amendment (see SPLOS/CRP.15, SPLOS/CRP.16 and SPLOS/CRP.19).

[15] The corresponding regulation of the United Nations Financial Regulations (regulation 5.2) contains, after paragraph (a), the following paragraph (b) which does not appear in the Financial Regulations approved by the International Tribunal for the Law of the Sea, and which, therefore, is not included in the present draft text: "(b) Half of the estimated miscellaneous income for the financial period for which credits have not previously been taken into account, and any adjustments in estimated miscellaneous income previously taken into account".

(b) Contributions resulting from the assessment of new States Parties under the provisions of regulation 5.9;

(c) Any balance of the appropriations surrendered under regulations 4.3 and 4.4.[16]

5.4 After the Assembly of States Parties has adopted or revised the budget and determined the amount of the Working Capital Fund, the Registrar shall:[17] (UN fin. reg. 5.3)

(a) Transmit the relevant documents to the States Parties;

(b) Inform the States Parties of their commitments in respect of annual contributions and advances to the Working Capital Fund;

(c) Request them to remit their contributions and advances.

5.5 Contributions and advances shall be considered as due and payable in full within thirty days of the receipt of the communication of the Registrar referred to in regulation 5.4, or as of the first day of the calendar year to which they relate, whichever is the later. As of 1 January of the following calendar year, the unpaid balance of such contributions and advances shall be considered to be one year in arrears.[18] (UN fin. reg. 5.4)

5.6. Annual contributions and advances to the Working Capital Fund shall be assessed and paid in United States dollars. (UN fin. reg. 5.5)

5.7 Payments made by a State Party shall be credited first to the Working Capital Fund and then to the contributions due, in the order in which the State Party was assessed. (UN fin. reg. 5.6)

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[16] The corresponding regulation of the United Nations Financial Regulations (regulation 5.2) contains the following additional paragraph which does not appear in the Financial Regulations approved by the International Tribunal for the Law of the Sea, and which, therefore, is not included in the present draft text: "(e) Half of the Members' credits in the Tax Equalization Fund for the financial period estimated to be not required to meet charges for tax refunds during the calendar year, and any adjustments in the estimated credits previously taken into account". The tax equalization issue, including the principle reflected in the Financial Regulations of the United Nations that the reimbursement of income taxes levied by Governments should be borne by those Governments, might also be relevant to the International Criminal Court. If so, it would have to be addressed in the Financial Regulations. The corresponding provision of the Financial Regulations approved by the International Tribunal for the Law of the Sea is the subject of a proposal for amendment (see SPLOS/CRP.19).

[17] The corresponding provision of the Financial Regulations approved by the International Tribunal for the Law of the Sea is the subject of a proposal for amendment (see SPLOS/CRP.19).

[18] The corresponding provision of the Financial Regulations approved by the International Tribunal for the Law of the Sea is the subject of a proposal for amendment (see SPLOS/CRP.19).

5.8 The Registrar shall submit to each meeting of the Assembly of States Parties a report on the collection of contributions and advances to the Working Capital Fund. (UN fin. reg. 5.7)

5.9 New States Parties shall be required to make contributions for the year in which they become States Parties and to provide their proportion of the total advances to the Working Capital Fund at rates to be determined by the Assembly of States Parties.[19] (UN fin. reg. 5.8)

5.10 Contributions of entities other than a State Party [or the United Nations] to the expenses of the Court shall be treated as miscellaneous income.[20] (UN fin. reg. 5.9)

Regulation 6[21]
Funds

6.1 There shall be established a General Fund for the purpose of accounting for the administrative expenditures of the Court. The contributions referred to in regulation 5.1 by States Parties and miscellaneous income and any advances made from the Working Capital Fund to finance administrative expenditures shall be credited to the General Fund. (UN fin. reg. 6.1)

6.2 There shall be established a Working Capital Fund in an amount and for purposes to be determined from time to time by the Assembly of States Parties. The Working Capital Fund shall be constituted by advances from States Parties. Advances shall be made in accordance with an agreed scale of assessment based upon the scale used for the regular budget. Advances shall be carried to the credit of States Parties which have made such advances.[22] (UN fin. reg. 6.2)

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[19] The corresponding provision of the Financial Regulations approved by the International Tribunal for the Law of the Sea is the subject of a proposal for amendment (see SPLOS/CRP.19).

[20] The corresponding provision of the United Nations Financial Regulations, regulation 5.9, differs, as it deals with situations particular to the United Nations. The words "or the United Nations" have been placed within square brackets pending consideration as to whether funds provided by the United Nations are to be treated as miscellaneous income. This provision should be consistent with regulation 7.1, below.

The United Nations Financial Regulations contain an additional regulation, regulation 5.10, which deals with borrowing for reimbursable seeding operations of the United Nations Habitat and Human Settlements Foundation. Such a provision presumably is not relevant to the International Criminal Court.

[21] With respect to draft regulations 6, 8, 9 and 11.3, it may be considered whether a relatively small secretariat would require as many funds and accounts as the United Nations itself. The use of interrelated subaccounts for banking and internal purposes might be considered.

[22] The corresponding provision of the Financial Regulations approved by the International Tribunal for the Law of the Sea is the subject of proposals for amendment (see SPLOS/CRP.15 and SPLOS/CRP.19).

6.3 Advances made from the Working Capital Fund to finance budgetary appropriations shall be reimbursed to the Fund as soon as and to the extent that income is available for that purpose. (UN fin. reg. 6.3)

6.4 Except when such advances are recoverable from some other source, advances made from the Working Capital Fund for unforeseen and extraordinary expenses or other authorized purposes shall be reimbursed through the submission of supplementary budget proposals.[23] (UN fin. reg. 6.4)

6.5 Income derived from investments of the Working Capital Fund shall be credited to miscellaneous income. (UN fin. reg. 6.5)

6.6 Trust funds, reserve and special accounts may be established by the Registrar and shall be reported to the [Presidency].[24] (UN fin. reg. 6.6)

6.7 The purpose and limits of each trust fund, reserve and special account shall be clearly defined by the appropriate authority. Unless otherwise decided by the Assembly of States Parties, such funds and accounts shall be administered in accordance with these Regulations.[25] (UN fin. reg. 6.7)

Regulation 7
Other income

7.1 All other income except:[26] (UN fin. reg. 7.1)

(a) Contributions to the budget;

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[23] The corresponding provision of the Financial Regulations approved by the International Tribunal for the Law of the Sea is the subject of a proposal for amendment (see SPLOS/CRP.19).

[24] The corresponding provision of the United Nations Financial Regulations, regulation 6.6, provides that trust funds, reserve and special accounts established by the Secretary-General are to be reported to the Advisory Committee on Administrative and Budgetary Questions. Financial regulation 6.6 approved by the International Tribunal for the Law of the Sea provides that such accounts established by the Registrar are to be reported to the "Tribunal". For reasons discussed in footnote 5, above, in the case of the International Criminal Court, it may be indefinite for such reporting to be simply to the "Court". Thus, for the purposes of the present text, the word "Presidency" has been placed within square brackets, pending a decision on to whom the reporting should be made. The corresponding provision of the Financial Regulations approved by the International Tribunal for the Law of the Sea is the subject of a proposal for amendment (see SPLOS/CRP.19).

[25] The corresponding provision of the Financial Regulations approved by the International Tribunal for the Law of the Sea is the subject of a proposal for amendment (see SPLOS/CRP.19).

[26] This provision should be consistent with regulation 5.10 above. The corresponding provision of the Financial Regulations approved by the International Tribunal for the Law of the Sea is the subject of a proposal for amendment (see SPLOS/CRP.19).

[(b) Funds provided by the United Nations in accordance with article 115, paragraph (b), of the Rome Statute;][27]

(c) Voluntary contributions made by States Parties, other States, international organizations, individuals, corporations and other entities, in accordance with article 116 of the Rome Statute;

(d) Direct refunds of expenditures made during the financial period;

(e) Revenue derived from staff assessment;

shall be classed as miscellaneous income, for credit to the General Fund.

7.2 Voluntary contributions, gifts and donations, whether or not in cash, may be accepted by the Registrar, provided that the [Presidency][28] is satisfied that the purposes for which the contributions are made are consistent with the nature and functions of the Court. Acceptance of contributions which directly or indirectly involve additional financial liability for the Court shall require the consent of the Assembly of States Parties.[29] (UN fin. reg. 7.2)

7.3 Contributions accepted for purposes specified by the donors shall be treated as trust funds or special accounts.[30] (UN fin. reg. 7.3)

7.4 Contributions in respect of which no purpose is specified shall be treated as miscellaneous income and reported as "gifts" in the accounts of the financial period. (UN fin. reg. 7.4)

[27] This provision has been placed within square brackets pending consideration as to whether funds provided by the United Nations are to be treated as miscellaneous income.

[28] The corresponding financial regulation approved by the International Tribunal for the Law of the Sea (regulation 7.2) provides that the "Tribunal" must be satisfied that the purposes for which contributions are made are consistent with the nature and functions of the Tribunal. For reasons discussed in footnote 5, above, in the case of the International Criminal Court, it may be indefinite for this function to be allocated simply to the "Court". Thus, for the purposes of the present text, the word "Presidency" has been placed within square brackets, pending a decision on to whom the authority should be allocated.

[29] The corresponding provision of the Financial Regulations approved by the International Tribunal for the Law of the Sea is the subject of a proposal for amendment (see SPLOS/CRP.19).

[30] The corresponding provision of the Financial Regulations approved by the International Tribunal for the Law of the Sea is the subject of a proposal for amendment (see SPLOS/CRP.19).

Regulation 8[31]
Custody of funds

8.1 The Registrar shall designate the bank or banks in which the funds of the Court shall be kept. (UN fin. reg. 8.1)

Regulation 9[32]
Investment of funds

9.1 The Registrar may make short-term investments of moneys not needed for immediate requirements and shall inform the [Presidency][33] periodically of such investments.[34] (UN fin. reg. 9.1

9.2 Income derived from investments shall be credited to miscellaneous income or as provided in the rules relating to each fund or account.[35] (UN fin. reg. 9.3)

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[31] See footnote 21.

[32] See footnote 21. In addition, it may be considered whether it would be appropriate and cost-effective for a relatively small secretariat to acquire the investment expertise needed in order for the Registrar to effectively make short-term investments. It might be preferable to provide that "moneys not needed to meet immediate requirements may be place in higher interest yielding fixed-term bank accounts".

[33] The corresponding provision of the United Nations Financial Regulations, regulation 9.1, provides that the Secretary-General must inform the Advisory Committee on Administrative and Budgetary Questions of such investments. Financial regulation 9.1 approved by the International Tribunal for the Law of the Sea provides that the Registrar must inform the "Tribunal" of such investments. For reasons discussed in footnote 5, above, in the case of the International Criminal Court, it would be indefinite for such reporting to be simply to the "Court". Thus, for the purposes of the present text, the word "Presidency" has been placed within square brackets, pending a decision on to whom the reporting should be made.

[34] The corresponding provision of the Financial Regulations approved by the International Tribunal for the Law of the Sea is the subject of a proposal for amendment (see SPLOS/CRP.19).

[35] The United Nations Financial Regulations contain the following additional provisions, which are not included in the Financial Regulations approved by the International Tribunal for the Law of the Sea and, therefore, have not been included in the present draft text:

> "9.2 The Secretary-General may, after consultation with the Investments Committee, make long-term investments of moneys standing to the credit of trust funds, reserve and special accounts, except as may be otherwise provided by the appropriate authority in respect of each such fund or account and having regard to the particular requirements as to the liquidity of funds in each case.
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> "...
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> "9.4 Under rules established by the Secretary-General, loans may be made from the resources of the United Nations Habitat for Human Settlements Foundation, including those borrowed pursuant to regulation 5.10, in implementation of the approved programmes of the Foundation."

Such a provision would presumably not be relevant in the case of the International Criminal Court.

The corresponding provision of the Financial Regulations approved by the International Tribunal for the Law of the Sea is the subject of a proposal for amendment (see SPLOS/CRP.19).

Regulation 10
Internal control

10.1 The Registrar shall:[36] (UN fin. reg. 10.1)

(a) Cause all payments to be made on the basis of supporting vouchers and other documents which ensure that the services or goods have been received and that payments have not previously been made;

(b) Designate the officers who may receive moneys, incur obligations and make payments on behalf of the Court;

(c) Maintain an internal financial control which shall provide for effective current examination and/or review of financial transactions in order to ensure:

(i) The regularity of the receipt, custody and disposal of all funds and other financial resources of the Court;

(ii) The conformity of obligations and expenditures with the appropriations or other financial provisions voted by the Assembly of States Parties, or with the purposes and rules relating to trust funds and special accounts;

(iii) The economic use of the resources of the Court.

10.2 Obligations for the current financial period or commitments for current and future financial periods shall be incurred only after allotments or other appropriate authorizations have been made in writing under the authority of the Registrar. (UN fin. reg. 10.2)

10.3 The Registrar may make such *ex gratia* payments as he or she deems to be necessary in the interest of the Court, provided that the statement of such payments shall be submitted to the Assembly of States Parties with the accounts. (UN fin. reg. 10.3)

[36] For reasons discussed in footnote 3, above, the substance of regulation 10.1 (a) approved by the International Tribunal for the Law of the Sea has, in the present draft text, been transposed to regulation 1.3.

Consideration might be given to specifying that the vouchers and other documents referred to in this regulation may be issued in electronic format.

10.4 The Registrar may, after full investigation, authorize the writing-off of losses of cash, stores and other assets, provided that a statement of all such amounts written off shall be submitted to the Auditor with the accounts and reported to the Assembly of States Parties. (UN fin. reg. 10.4)

10.5 Substantial purchases of equipment, supplies and other requirements as specified in the Financial Rules shall be by tender. Such tenders shall be invited by advertisement, except where the Registrar, with the approval of the President, deems that, in the interests of the Court, a departure from the rule is desirable.[37] (UN fin. reg. 10.5)

Regulation 11
The accounts

11.1 The Registrar shall submit accounts for the financial period. In addition, the Registrar shall maintain, for management purposes, such accounting records as are necessary. The accounts for the financial period shall show: (UN fin. reg. 11.1)

(a) The income and expenditures of all funds;

(b) The status of appropriations, including:

(i) The original budget appropriations;

(ii) The appropriations as modified by any transfers;

(iii) Credits, if any, other than the appropriations adopted by the Assembly of States Parties;

(iv) The amounts charged against those appropriations and/or other credits;

(c) The assets and liabilities of the Court.

The Registrar shall also give such other information as may be appropriate to indicate the current financial position of the Court.

[37] The corresponding provision of the United Nations Financial Regulations, regulation 10.5, does not restrict the requirement of tenders to "substantial purchases". That regulation provides: "Tenders for equipment, supplies and other requirements shall be invited by advertisement, except where the Secretary-General deems that, in the interests of the Organization, a departure from the rule is desirable". The wording of the draft provision in the present text reflects the wording of financial regulation 10.5 approved by the International Tribunal for the Law of the Sea.

11.2 The accounts of the Court shall be presented in United States dollars. Accounting records may, however, be kept in such other currency as the Registrar may deem necessary. (UN fin. reg. 11.2)

11.3 Appropriate separate accounts shall be maintained for all trust funds and special accounts.[38] (UN fin. reg. 11.3)

11.4 The accounts for the financial period shall be submitted by the Registrar to the Auditor not later than 31 March following the end of the financial period. (UN fin. reg. 11.4)

Regulation 12
Audit

12.1 The [Presidency][39] shall appoint an Auditor which shall be an internationally recognized firm of auditors. The Auditor shall be appointed for a period of four years and may be reappointed.[40] (UN fin. reg. 12.1)

12.2 The audit shall be conducted in conformity with generally accepted common auditing standards and in accordance with the additional terms of reference set out in the annex to these Regulations. (UN fin. reg. 12.4)

12.3 The Auditor may make observations with respect to the efficiency of the financial procedures, the accounting system, the internal financial controls and, in general, the administration and management of the Court. (UN fin. reg. 12.5)

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[38] See footnote 21.

[39] Pursuant to United Nations financial regulation 12.1, the General Assembly appoints the Board of Auditors. Under financial regulation 12.1 approved by the International Tribunal for the Law of the Sea, the auditor is appointed by the "Tribunal". For reasons discussed in footnote 5, above, in the case of the International Criminal Court, it may be indefinite for this appointment to be made simply by the "Court". Thus, for the purposes of the present draft text, the word "Presidency" has been placed within square brackets, pending a decision as to who is to appoint the auditor. The corresponding provision of the Financial Regulations approved by the International Tribunal for the Law of the Sea is the subject of a proposal for amendment (see SPLOS/CRP.19).

[40] For purposes of comparison, United Nations financial regulation 12.1 provides, "The General Assembly shall appoint a board of auditors to perform the audit of the accounts of the United Nations. This board shall consist of three members, each of whom shall be the Auditor-General (or officer holding the equivalent title) of a Member State". The wording of the present draft text corresponds with that of financial regulation 12.1 approved by the International Tribunal for the Law of the Sea. The United Nations Financial Regulations contain additional provisions (regulations 12.2 and 12.3) dealing with tenure of office of the members of the Board of Auditors. Such provisions are not included in the Financial Regulations approved by the International Tribunal for the Law of the Sea, and have therefore not been included in the present draft text.

12.4 The Auditor shall be completely independent and solely responsible for the conduct of the audit. (UN fin. reg. 12.6)

12.5 The [Presidency] may request the Auditor to perform certain specific examinations and issue separate reports on the results.[41] (UN fin. reg. 12.7)

12.6 The Registrar shall provide the Auditor with the facilities required in the performance of the audit.[42] (UN fin. reg. 12.8)

12.7 The Auditor shall issue a report on the audit of the financial statements and relevant schedules relating to the accounts for the financial period, which shall include such information as the Auditor deems necessary with regard to matters referred to in regulation 12.3 and in the additional terms of reference. (UN fin. reg. 12.10)

12.8 The [Presidency] shall examine the financial statements and the audit reports and shall forward them to the Assembly of States Parties, with such comments as it deems appropriate.[43] (UN fin. reg. 12.11)

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[41] Under United Nations financial regulation 12.7, the Advisory Committee on Administrative and Budgetary Questions may request the Board of Auditors to perform certain specific examinations and issue separate reports on the results. Under financial regulation 12.5 approved by the International Tribunal for the Law of the Sea, the "Tribunal" may make such a request. For reasons discussed in footnote 5, above, in the case of the International Criminal Court, it may be indefinite for this request to be made simply to the "Court". Thus, for the purposes of the present draft text, the word "Presidency" has been placed within square brackets, pending a decision as to who is to have this authority. The corresponding provision of the Financial Regulations approved by the International Tribunal for the Law of the Sea is the subject of a proposal for amendment (see SPLOS/CRP.19).

[42] Following the corresponding regulation (regulation 12.8) in the United Nations Financial Regulations appears the following provision (regulation 12.9), which does not appear in the Financial Regulations approved by the International Tribunal for the Law of the Sea and which therefore has not been included in the present draft text: "For the purpose of making a local or special examination or of effecting economies in the audit cost, the Board of Auditors may engage the services of any national Auditor-General (or officer holding the equivalent title) or commercial public auditors of known repute or any other person or firm who, in the opinion of the Board, is technically qualified".

[43] The corresponding provision of the United Nations Financial Regulations (regulation 12.11) provides that the audit reports and audited financial statements shall be transmitted to the General Assembly through the Advisory Committee on Administrative and Budgetary Questions. Under financial regulation 12.8 approved by the International Tribunal for the Law of the Sea, the "Tribunal" shall examine the financial statements and audit reports and forward them to the Meeting of States Parties, with such comments as it deems appropriate. For reasons discussed in footnote 5, above, in the case of the International Criminal Court, it may be indefinite for this function to be allocated simply to the "Court". Thus, for the purposes of the present draft text, the word "Presidency" has been placed within square brackets, pending a decision as to who is to perform this function.

Regulation 13
Decisions involving expenditures

13.1 Where, in the opinion of the Registrar, the proposed expenditure cannot be made from the existing appropriations, it shall not be incurred until the Assembly of States Parties has made the necessary appropriations or unless the Registrar certifies that provision can be made under the conditions of an applicable decision of the Assembly of States Parties relating to unforeseen and extraordinary expenses.[44] (UN fin. reg. 13.2)

Regulation 14
General provisions

14.1 These regulations shall become effective on 1 July ____ and shall apply to the financial period ____ and to subsequent financial periods. (UN fin. reg. 14.1)

14.2 These Regulations may be amended by the Assembly of States Parties. (UN fin. reg. 14.1)

[44] The United Nations Financial Regulations contain the following additional provision (regulation 13.1), which is not contained in the Financial Regulations approved by the International Tribunal for the Law of the Sea and, therefore, is not included in the present draft text: "No Council, Commission or other competent body shall take a decision involving either a change in the programme budget approved by the General Assembly or the possible requirement of expenditure unless it has received and taken account of a report from the Secretary-General on the programme budget implications of the proposal". The corresponding provision of the Financial Regulations approved by the International Tribunal for the Law of the Sea is the subject of a proposal for amendment (see SPLOS/CRP.19). In addition, a proposal has been made to add to the Financial Regulations approved by the International Tribunal for the Law of the Sea a new regulation 6.2 (see SPLOS/CRP.19).

Annex to the financial regulations

Additional terms of reference governing the audit of the International Criminal Court[45]

	Annex to the Financial Regulations of the United Nations
1. The Auditor shall perform such audit of the accounts of the Court, including all trust funds and special accounts, as it deems necessary in order to satisfy itself:	"
(a) That the financial statements are in accord with the books and records of the Court;	"
(b) That the financial transactions reflected in the statements have been in accordance with the financial rules and regulations, the budgetary provisions and other applicable directives;	"
(c) That the securities and moneys on deposit and on hand have been verified by certificates received direct from the Court's depositaries or by actual count;	"
(d) That the internal controls, including internal oversight, are adequate in the light of the extent of reliance placed thereupon.	"
2. The Auditor shall be the sole judge as to the acceptance in whole or in part of certifications and representations by the Registrar and may proceed to such detailed examination and verification as it chooses of all financial records, including those relating to supplies and equipment.	"
3. The Auditor and its staff shall have free access at all convenient times to all books, records and other documentation which are, in the opinion of the Auditor, necessary for the performance of the audit. Information which is classified as privileged and which the Registrar (or a designated senior official) agrees is required by the Auditor for the purposes of the audit and information classified as confidential shall be made available on application. The Auditor and its staff shall respect the privileged and confidential nature of any information so classified which has been made available and shall not make use of it except in direct connection with the performance of	"

[45] It may be considered whether the provisions of regulation 12 suffice for the purposes of the International Criminal Court, and whether these additional terms of reference need be issued as regulatory requirements.

the audit. The Auditor may draw the attention of the Court and the Assembly of States Parties to any denial of information classified as privileged which, in its opinion, was required for the purpose of the audit.

4. The Auditor shall have no power to disallow items in the accounts but shall draw the attention of the Registrar, for appropriate action, to any transaction for which it entertains doubt as to legality or propriety. Audit objections, to these or any other transactions, arising during the examination of the accounts shall be communicated immediately to the Registrar. "

5. The Auditor (or such of its officers as it may designate) shall express and sign an opinion on the financial statements which shall read as follows: "

> "We have examined the following appended financial statements, numbered ... to ..., properly identified, and relevant schedules of the International Criminal Court for the financial period ended 31 December ... Our examination included a general review of the accounting procedures and such tests of the accounting records and other supporting evidence as we considered necessary in the circumstances."

The opinion shall also state, as appropriate, whether:

(a) The financial statements present fairly the financial position as at the end of the period and the results of their operations for the period then ended; "

(b) The financial statements were prepared in accordance with the stated accounting principles; "

(c) The accounting principles were applied on a basis consistent with that of the preceding financial report; "

(d) Transactions were in accordance with the Financial Regulations and legislative authority. "

6. The report of the Auditor in the financial operations of the Court for the financial period shall be submitted to the Assembly of States Parties through the [President].[46] It shall indicate: "

(a) The type and scope of the Auditor's examination; "

(b) Matters affecting the completeness and accuracy of the accounts, including, where appropriate: "

[46] See footnote 39, above. This provisions should be consistent with regulation 12.8.

(i) Information necessary to the correct interpretation of the accounts; "

(ii) Any amounts which ought to have been received but which have not been brought to account; "

(iii) Any amounts for which a legal or contingent obligation exists and which have not been recorded or reflected in the financial statements; "

(iv) Expenditures not properly substantiated; "

(v) Whether proper books of accounts have been kept — where in the presentation of statements there are deviations of a material nature from the generally accepted accounting principles applied on a consistent basis, these should be disclosed; "

(c) Other matters which the Auditor considers should be brought to the notice of the Assembly of States Parties, such as: "

(i) Cases of fraud or presumptive fraud; "

(ii) Wasteful or improper expenditure of the Court's money or other assets, notwithstanding that the accounting for the transaction may be correct; "

(iii) Expenditure likely to commit the Court to further outlay on a large scale; "

(iv) Any defect in the general system or detailed regulations governing the control of receipts and disbursements or of supplies and equipment; "

(v) Expenditure not in accordance with the intention of the Assembly of States Parties after making allowance for duly authorized transfers within the budget; "

(vi) Expenditure in excess of appropriations as amended by duly authorized transfers within the budget; "

(vii) Expenditure not in conformity with the authority which governs it; "

(d) The accuracy or otherwise of the supplies and equipment records as determined by stock-taking and examination of the reports; "

(e) If appropriate, transactions accounted for in a previous period concerning which further information has been obtained or transactions in a later period concerning which it seems desirable that the Assembly of States Parties should have early knowledge. "

7. The Auditor may make such observations with respect to its findings resulting from the audit and such comments on the Registrar's financial report as it deems appropriate to the Assembly of States Parties, the [Presidency] or the Registrar.[47] "

8. Whenever the scope of audit of the Auditor is restricted, or whenever it is unable to obtain sufficient evidence, it shall refer to the matter in its opinion and report, making clear in the report the reasons for its comments and the effect on the financial position and the financial transactions as recorded. "

9. In no case shall the Auditor include criticism in its report without first affording the Registrar an adequate opportunity of explanation on the matter under observation. "

10. The Auditor shall not be required to mention any matter referred to in the foregoing that, in its opinion, is insignificant in all respects. "

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[47] Under paragraph 7 of the Annex to the Financial Regulations of the United Nations, the Board of Auditors may make such observations to the General Assembly or the Secretary-General Under the corresponding provision of the Annex to the Financial Regulations approved by the International Tribunal for the Law of the Sea, the auditor may make such observations to the "Meeting of States Parties, the Tribunal or the Registrar". For reasons discussed in footnote 5, above, in the case of the International Criminal Court, it may be indefinite for the observations to be made simply to the "Court". Thus, for the purposes of the present draft text, the word "Presidency" has been placed within square brackets, pending a decision as to whom the auditor may make the observations.